

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:POSTF-129378-02

EYWu

date: JUL - 9 2002

to: Sid Holstein, Revenue Agent, LMSB 1757

from: June Y. Bass, Associate Area Counsel (LMSB)
Erica Y. Wu, Attorney (LMSB)

subject: Taxpayer: [REDACTED]
EIN: [REDACTED]
Tax Year: [REDACTED]
Issue: Form 872
Statute of Limitations: September 15, [REDACTED]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum responds to your request dated May 21, 2002. This memorandum should not be cited as precedent.

ISSUE

What is the proper caption for a consent to extend the time to assess any Federal income tax due on the consolidated return filed by [REDACTED] for the [REDACTED] tax year?

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CONCLUSION

The Form 872 should be captioned as:

[REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED]
[REDACTED], formerly known as [REDACTED]
[REDACTED], formerly known as [REDACTED]
[REDACTED] *

At the bottom of the front page of the Form 872, type in:

* This is with respect to the consolidated income tax liability of [REDACTED]
[REDACTED] consolidated group for the tax year ending December 31, [REDACTED].

FACTS¹

[REDACTED] (EIN: [REDACTED]) (the "Parent") filed a consolidated return for the [REDACTED] calendar year as the common parent of an affiliated group consisting of itself and four subsidiaries: [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED] (collectively the "Subsidiaries"). This return, filed on September 15, [REDACTED], shows the taxpayer's name as "[REDACTED]"

The Parent was incorporated in California in [REDACTED] under the name "[REDACTED]" and has since undergone three name changes. It first changed the name to "[REDACTED]" on [REDACTED],² then to "[REDACTED]" on [REDACTED], and finally to its present name "[REDACTED]" on [REDACTED].

Each of the Subsidiaries has been either dissolved, merged out of existence, or sold to an unrelated third party, since the [REDACTED] return was filed. The Parent is still in existence.

¹ Our understanding of the facts of this case is limited to the facts presented by you. We have not undertaken any independent investigation of the facts of this case. If the actual facts are different from the facts known to us, our legal analysis and our conclusions and recommendations might be different. Accordingly, if you learn that the facts known to us are incorrect or incomplete in any material respect, you should not rely on the opinions set forth in this memorandum, and should contact our office immediately.

² The Parent apparently did not reflect the new name ([REDACTED]) on the [REDACTED] return.

DISCUSSION

I.R.C. § 1501 grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the members of the group consent to be bound by the regulations promulgated under I.R.C. § 1502. I.R.C. § 1501. Under those regulations, the common parent of the consolidated group shall be the sole agent for the members of the group with respect to the group's consolidated tax liability. Treas. Reg. § 1.1502-77(a). The common parent remains the agent for the group for any years during which it was the common parent, regardless of whether consolidated returns are filed in subsequent years and whether one or more subsidiaries have become or have ceased to be members of the group at any time. Id.; See also Craigie, Inc. v. Commissioner, 84 T.C. 466, 472 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401.

As sole agent, the common parent has the authority to act in its own name for all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a)(2). Except for certain situations not pertinent here, no subsidiary shall have the authority to act for or to represent itself in any tax matter. Id. Thus, as a general rule, only the common parent may execute a consent to extend the limitations period for any taxable year during which it was the common parent, as long as it remains in existence. Treas. Reg. § 1.1502-77(a)(2)(iv). This is true even if any other members of the group cease to exist or become disaffiliated.

In this case, the Parent still exists. Therefore, it remains the sole agent for the group and is the proper party to execute a Form 872 on behalf of the group for the [REDACTED] tax year. A consent executed by the Parent shall bind the Subsidiaries and, where applicable, their respective successors. See Treas. Reg. § 1.1502-77(a)(2)(iv).

Given that the Parent has had multiple name changes, we recommend the Form 872 be captioned as follows:

[REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED]
[REDACTED], formerly known as [REDACTED], formerly
known as [REDACTED] *

At the bottom of the front page of the Form 872, type in:

* This is with respect to the consolidated income tax liability of [REDACTED]
[REDACTED] consolidated group for the tax
year ending December 31, [REDACTED].

We also recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the Statute of Limitations Handbook, IRM 121.2.22 provides procedures for processing consents to extend the statute of limitations on assessment. In particular, IRM 121.2.22.3 sets forth procedures to comply with the notification that the Service must provide taxpayers on each occasion when the taxpayer is requested to extend the statute of limitations by

consent. The IRM requires that this notification be made to the taxpayer by sending or presenting Letter 907(DO) and sending or presenting Publication 1035, which together inform the taxpayer of its right to refuse to extend the limitation period, the right to request the extension to be limited to a particular issue, and the right to request the limitation period to be limited to a specific date.

This advice has been coordinated with the National Office using the pre-preview procedure. Please contact Erica Wu at (949)360-2678 if you have any questions.